G. R. S. III—1] 1920.

19.6.99

GENERAL AND REVENUE SECRETARIAT.

(Courts)

NOTES.

File No. 249. 19

FILE HEADING.

Reference as to the Investiture of Special Magistrates with Summary powers

From The Registrar, Chief Court of Mysore

C. No. 1158 19-20 Dated 26th April 1920 Received on 29/4/1920

Diary No. 7699 | Enclos. 1 | Spare Copies. nil | Serial No. 1

BRIEF ABSTRACT OF LETTER.

States that the Magistrate of Mysore has reported in publication of his trial that even the second class Magistrates have been exercising Summary powers under the Notification of 3rd Sept 1900 which is an illegal course and requests that steps be taken for the Notification of 1900 & 1903 may be cancelled expressly as they are opposed to the Criminal

NOTES AND ORDERS.

Submitted for orders

KR
3/5/1920

NOTES—First Sheet.

G. R. S. III-2]

19699 (2)

General and Revenue Secretariat.

Ch File No. 49 of 1919.

Serial No.

(1) The powers invested under s. 3) clearly show that the Magte had not been invested with the Summary powers under s. 260, and (and rightly so) invited to notify of 23.12.1919. It is not clear why, in the face of this notify, the Magte presumed the contrary & exercised powers which he did not possess.

(2) The notifns of 1900 & 1903 have been impliedly cancelled by the notifn of 1919; and there seems to be no necessity to cancel them as proposed by the Chief Court.

The proper course for the Magte was to have made a reference to the Dte Magte on the point instead of trying cases irregularly & involving the aid of obsolete notifns to justify the procedure which has resulted in causing great inconvenience & loss to the parties in all the cases. This seems to be an irregularity of a serious kind which magistrates are expected to avoid.

(3) It is clear that similar revision cases have been filed in the Chief Ct - in a num-

NOTE—Contn. sheet.

G. R. S. III-2]

General and Revenue Secretariat.

File No. 249 of 1910.

Serial No.

of cases. Submitted for orders

D. M.
5/15

(1) Kind reference is also invited to the remarks of Hon'ble Justice Sivasamy Iyer at p. 4 of his order.

D. M.
5/15

Chief Secy (2)

III Member To prevent any doubts the notification of 1903 may be expressly cancelled.

(3) Mr. D. Srinivasaraghava's action appears extraordinary. It is not clear whether objection was taken to the summary trial in the initial stage.

3rd member

1803
575
D. 6/11

(4) It seems that Magistrates under Sec. 260, Summary powers can be conferred individually by name and not generally upon the holders of an office even though he might be exercising the powers of a Magistrate of the 1st Class. Otherwise, the practice must be that these powers should be specially conferred loco all its incumbents. I am inclined to think that the notifications of the year 1903 are not in conformity

6265
7/5/20

NOTE—Contn. sheet.

G. R. S. III-2]

General and Revenue Secretariat.

File No. 249 of 1919-20.

Serial No.

A

DEWAN'S OFFICE.
Recd. on MAY 11 1920
Reg. No. 7580

NOTE—Contn. sheet.

G. R. S. III-2]

196 / 9

General and Revenue Secretariat.

Ch File No. 266 of 191[illegible].

Serial No.

(14) It seems only Para 1 of the notification of 1903 has to be cancelled, as by cancelling the whole of it para 2 of the notification of 1900 will be revived. Draft is altered accordingly & submitted for orders

W.
V.

28/6/20

(15) Draft notifn submitted for approval

D. M. 9/6

Chief Judge
III Member

(16) approved

CJ 9/6
D. M. 9/6

8066
21-6-20

(17) Issue

CJ 29/6

(5) Please draw & then send to the Confidential section for note & return

D. M. 23/6

ISSUE & RESUBMIT.

2

To The Compiler, Mysore Gazette.
~~The Registrar, Chief~~

No. G. 28359 dt 28th June 1920.

Cancels Notification No. 175/J. dt 20-7-03 investing the Assistant Commissioners, who are 1st class magistrates in the cities of Mysore & Bangalore with Summary powers.

To The Registrar, Chief Court.

No. G. 28360 dt 28-6-20

for a copy of above [illegible]

Note—Contn. sheet.

G. R. S. III-2)

19699

19699

General and Revenue Secretariat.

Ch File No. 249 of 1919.

Serial No.

(15) This may be sent to the Confidential Branch for note & return as ordered in para (14) above

KR 27-1-20

To the Confidential Br)

CS

20) para 8 added and file returned.

CS 9/7/20.

CONFIDENTIAL BRANCH. 10 JUL 1920

NOTE—Contn. sheet.

FILE No. 19699.

1919 - 1920.

Ch No 1158 Sne: 1
19-1-20
Ch Secty
2-1-1920 Ch

SECTION Ch

CHIEF COURT OF MYSORE, 242
BANGALORE, Dated 26th April 1920.

From

23050

The Registrar of the
Chief Court of Mysore.

To

The Chief Secretary to the
Government of Mysore, Bangalore.

Sir,

I am directed to invite attention to the decision of Mr. Justice Doraswami Iyer in Criminal Revision Petitions Nos. 129, 135, 143, 146 and 149 of 1919-20 (copy enclosed) in which the learned Judge has held that Notifications No. 3330/3.344, dated 7-9-1900 empowering the City Magistrates of Bangalore and Mysore for the time being to try cases summarily, and No. J. 175, dated 20-7-1903 empowering Assistant Commissioners in Bangalore and Mysore to try cases summarily provided they are magistrates of the first class and have jurisdiction to try cases, are impliedly cancelled, on the introduction of the scheme for the separation of executive and judicial functions.

Mr. D. Srinivasachar, the City Magistrate of Bangalore has written a demi official letter to the Registrar of the Chief Court (promptly before he received a copy of the court's order) in which he states inter alia that under the earlier of the orders referred to, that of September 1900, even second class magistrates have been exercising [illegible] jurisdiction when appointed from time to time to the [illegible]

Please
Reserve the
order of Hon'ble Mr. Justice Kay
Cancelling my
note.
Ch Secy

eds
29/4

PUBLIC
30 APR 1920

Criminal Revision Petitions Nos. 129, 135, 143 and 148 of 1919-20 against the decisions of the City Magistrate of Mysore in Criminal Cases Nos. 103/Sy. 79, 230/Sy.87, 59/Sy. 80, and 250/Sy. 85, respectively of 1919-20.

Criminal Revision Petition No. 146 of 1919 - 20

presented by Mr. H.V. Narayana Rao, advocate on behalf of the petitioner Hari Gowda, accused in Criminal Case No. 124/Sy. No. 95 of 1919-20 on the file of the City Magistrate of Mysore, praying that the proceedings of the lower court may be revised.

Heard Mr. H.V. Narayana Rao, advocate on behalf of the petitioner in Cr.R.P. No. 146 of 1919 - 20.

These Criminal Revision Petitions Nos. 129, 135, 143, and 148 of 1919-20 coming on for hearing, and this Criminal Revision Petition No. 146 of 1919-20 coming on for admission this day, the court pronounced the following :-

O R D E R.

These cases were tried summarily by Mr. D.Srinivasa Iyengar, the present City Magistrate, Mysore, and except in one case (Criminal Revision Petition No. 135) the petitioners in the other cases were convicted of offences which admittedly are triable in a summary way under section 260 of the Criminal Procedure Code. The case brought by the petitioner in Criminal Revision Petition No. 135 ended in the acquittal of the opponent. All these cases were decided by Mr.D.Srinivasa Iyengar between the 20th January and 11th February 1920. The

legality

NO.

legality of the trial in all these cases is questioned on the ground that on the dates on which they were tried and disposed of summarily Mr. D.Srinivasiengar had not been specially empowered by Government to exercise summary powers. On a reference to the notifications in this respect I find that it is so. Mr. D.Srinivasiengar was appointed City Magistrate, Mysore, with effect from the 2nd January 1920 in connection with the extension to the Mysore District of the scheme for the separation of Judicial and Executive functions.' (Vide Notification No. 126 - C. 13120-19-2, dated 20-12-1919). Under Section 12 of the Code of Criminal Procedure he was appointed as a magistrate of the first class, and under section 37 of the Code he was invested with all the additional powers specified in the 4th schedule thereof, except the power to try summarily. (Vide Notification No. C. 14026/Cts.137-19-2, dated 23-12-1919). He was entrusted with summary powers only in March 1920 (vide Notification No. G. 21256/Cts. 92-19-3, dated 15-3-1920).

Mr. D. Srinivasiengar had thus, no jurisdiction on the dates on which the cases in question were tried and disposed of to deal with them in a summary way. If any magistrate not being empowered by law in this behalf tries a case summarily his proceedings are, under section 530(3), Criminal Procedure Code, wholly void. I must therefore hold that the proceedings of Mr. D. Srinivasiengar in all these cases under revision are absolutely without jurisdiction and are void.

Mr. L.Srinivasa Rao who appeared for the opponent in one of these cases, contended that the City Magistrate of Mysore, for the time being, was under Notification No. J.39/J.344, dated 3-9-1900, empowered to exercise summary powers, and that under a later Notification No. J.173, dated 20-7-1[illegible], an Assistant Commissioner for the time being empowered to try cases arising within the limits of Mysore City, was empowered

to

to try summarily cases arising within the said limits provided he was a magistrate of the first class. But those two notifications should be deemed to have been superseded by the notifications issued in 1918 and 1919 in connection with the separation scheme. In any event, it is unnecessary, in the case of Mr. D.Srinivasiengar to go behind the Notification of the 23rd December 1919 above referred to, to find out that he had no power to try summarily, until specially empowered in that behalf by Government.

The proceedings of Mr. D. Srinivasiengar being thus illegal and void, the acquittal of the opponent in Criminal Revision Petition No. 135 of 1919-20 (Criminal Case No. 230 of 1919-20/Summary Case No. 97 of 1919-20) and the conviction of the petitioners in the other four cases are hereby set aside, and the fines, if levied, should be refunded.

All the cases will be sent back to the City Magistrate, Mysore, who will proceed to deal with them according to law, from the stages where they were, prior to the adoption by him of summary procedure in the trial of those cases.

Sd/- C.S. Doraswami Iyer,

J U D G E.

Copy.

Srinivasiengar

For Registrar.

N.G.

NRK

G. R. S. VI—G/32]

SUBJECT Cancels notification no 175/J/Ch 71-02:2 dt 20-7-03 - investing Asst Comm^rs within Bangalore Mysore cities with Summary powers -

Diary No. of letter replied to 9699

Section Ch
File No. 249 29
Serial No. 2

GENERAL AND REVENUE SECRETARIAT
( )
the 191 .

Notification
No. 52835

Date of issue 28/6

Signed by Mr CSB

Para 1 of
~~To~~ notification no 175/J ~~Ch 71 dt 02-03:2~~
dt the 20th July 1903 investing the Assistant Commissioners who are 1st Class Magistrates in respect of cases arising ~~residing~~ within the limits of the cities of Bangalore & Mysore ~~with~~ ~~Summary powers under Sec 260 Crim Proced Code, 1898~~ is hereby Cancelled

By order

9/6.

9/6

for Chief Secretary

To

The Compiler, Mysore Gazette, for

with Summary powers under Sec 260 of the Cr Pro Code,

Flag 'W'.

Pl. over.

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

GENERAL AND REVENUE SECRETARIAT,

Dated Bangalore, June 1920.

No.

NOTIFICATION.

Para 1 of Notification No. 175/J., dated the 20th July 1903, investing with summary powers under Section 260 of the Criminal Procedure Code, the Assistant Commissioners who are First-Class Magistrates in respect of cases arising within the limits of the cities of Bangalore and Mysore - - is hereby cancelled.

By Order,

(Sd) C.S. Balasundaram Iyer.

Chief Secretary to Government.

To

The Compiler, Mysore Gazette, for publication in the Gazette with a request that 25 spare copies may be sent to this office.

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Memo. No.

Dated, Bangalore, the June 1920.

Copy of the above is forwarded, with compliments to the Registrar, Chief Court of Mysore, with reference to his letter No.C.1158/19-20, dated the 26th April 1920.

By Order,

Mahadevaya

for Chief Secretary to Government.

SV/4.